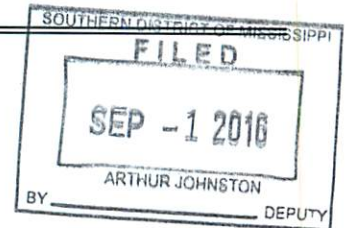


UNITED STATES DISTRICT COURT

for the

Southern District of Mississippi



United States of America
v.
Dr. Michael Jay Loebenberg

Case No. 1:16mj 565 -RHW

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 1, 2016 in the county of Harrison in the
Southern District of MS, Southern Division, the defendant(s) violated:

Code Section

Offense Description

21 U.S.C. § 841(a)(1)

Possession with Intent to Distribute a Controlled Substance Outside the Scope of Professional Practice.

This criminal complaint is based on these facts:

See affidavit attached hereto and incorporated herein

☒ Continued on the attached sheet.

Complainant's signature

Mary Flinchum, Task Force Agent/DEA

Printed name and title

Sworn to before me and signed in my presence.

Date: 09/01/2016

Judge's signature

City and state: Gulfport, MS

Robert H. Walker, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT

I, Mary M. Flinchum, being first duly sworn, state as follows:

Introduction

I am employed as a Narcotics Lieutenant with the Mississippi Bureau of Narcotics (MBN), assigned as a Task Force Officer (TFO) with the United States Department of Justice, Drug Enforcement Administration (DEA). I have been assigned to the Tactical Diversion Squad, Jackson District Office since October 2010. I am currently assigned to the Gulfport Resident Office located in Gulfport, MS. In connection with my official DEA Task Force duties, I have participated in numerous investigations involving drug trafficking violations, including possession with intent to distribute controlled substances, distribution of controlled substances and conspiracy to possess with intent to distribute controlled substances in violation of Title 21 of the United States Code. These investigations have resulted in arrest and convictions of individuals involved in the illegal trafficking of controlled substances as well as the diversion of pharmaceutical controlled drugs.

Probable Cause Factual Basis

1. Dr. Michael Jay LOEBENBERG is a licensed medical doctor and is registered with the Drug Enforcement Administration (DEA) as a medical practitioner with the authority to prescribe controlled substances in the State of Mississippi. LOEBENBERG practiced medicine at Digestive Health Center, located at 147 Reynoir Street, Suite 301, Biloxi, MS 39530; 3890 Bienville, Boulevard, Ocean Springs, MS 39564; and 3616 Hospital Road, Suite A, Pascagoula, MS 39581.

2. On January 13, 2016, DEA Jackson District Office Tactical Diversion Squad (TDS) Task Force Officers and a Biloxi Police Department investigator met with a Confidential Source (CS) that had an escort encounter with LOEBENBERG in December 2015. At the completion of their encounter, LOEBENBERG explained that he was a “GI doctor” and if the CS ever needed anything he would help him/her out and or make an exchange: escort services for controlled substance prescriptions. As further detailed below, the CS provided the initial intelligence information that established the foundational basis of this investigation. Information provided by the CS was independently checked and verified by your affiant and other law enforcement officers involved in this investigation. Your affiant has determined that the CS’s information, relative to this investigation, has been truthful, accurate and reliable.

3. The DEA Jackson District Office Tactical Diversion Squad (TDS) in conjunction with Agents from DEA Gulfport Resident Office and MBN initiated an investigation of LOEBENBERG after obtaining information that LOEBENBERG would prescribe controlled substances outside the course of professional practice with no legitimate medical purpose.

4. On January 19, 2016, the CS made telephonic contact with LOEBENBERG and requested that LOEBENBERG prescribe controlled substances to the CS. LOEBENBERG subsequently advised that he was out of town and asked the CS to contact him once he returned. Subsequently, LOEBENBERG agreed to provide controlled substances to the CS for cash.

5. From January 29, 2016 to June 8, 2016, DEA conducted three undercover operations involving the CS on two occasions and an introduction of one undercover

(UC1) operative during the second purchase. The UC provided LOEBENBERG with an additional name (UC2) to obtain prescriptions without UC2 present. The CS and UC1 utilized concealed audio and video recording devices during their meetings with LOEBENBERG. As previously stated, the CS telephonically contacted LOEBENBERG prior to meeting with him. LOEBENBERG did not perform a medical examination and thereafter provided prescriptions for controlled substances to the CS and UCs. As further detailed below, the CI and UCs were monitored and/or surveilled by law enforcement officers and also provided with Special Operational Funds (SOF) to pay for each prescription obtained from LOEBENBERG.

Confidential Source Purchase #1 with LOEBENBERG

6. On Friday, January 29, 2016, CS met LOEBENBERG in the parking lot of 921 Cedar Lake Road, Biloxi, MS in front of Pops Pizzeria. CS previously arranged for the purchase of prescription(s) for controlled substances without having a legitimate medical need. Prior to CS's meeting with LOEBENBERG on this date, the CS contacted LOEBENBERG via text message and advised LOEBENBERG that he/she (CS) could meet him in the parking lot located at the corner of Popps Ferry Road and Cedar Lake Road, in the City of Biloxi. The CS also asked LOEBENBERG what he was driving. LOEBENBERG responded to the CS via text message: "Sure a silver BMW".

7. Agents observed LOEBENBERG driving a BMW, silver in color, bearing MS license plate IMD2B, pull up and park in front of Pops Pizzeria. The CS exited his/her vehicle and walked over to meet LOEBENBERG. Agents observed the CS get into LOEBENBERG's vehicle. After a brief introduction, LOEBENBERG began filling out a controlled substance prescription. LOEBENBERG wrote to CS for 90 dosage units of

Norco (Hydrocodone) 10/325 milligrams in exchange for \$40.00. Hydrocodone is a Schedule II controlled substance.

Undercover Purchase #2 with LOEBENBERG

8. On Tuesday, April 5, 2016, CS and UC1 presented to LOEBENBERG in an undercover capacity at the parking lot of Applebee's located at 1601 Bienville Boulevard, Ocean Springs, MS. The meeting with LOEBENBERG was prearranged by the CS for the purpose of CS and UC obtaining prescription(s) for controlled substances from LOEBENBERG without having a legitimate medical need.

9. Previously, during text communication with LOEBENBERG the CS asked LOEBENBERG about getting similar prescriptions for friends. LOEBENBERG explained that he would need to be careful with his license. CS explained that the individuals were trustworthy and LOEBENBERG agreed to meet with CS's friend (UC1). CS asked LOEBENBERG about the cost per prescription and LOEBENBERG responded with "40 for 60 pills". All communication, text messages and telephonic communication between the CS and LOEBENBERG were digitally recorded and monitored.

10. On the same date, LOEBENBERG instructed the CS to meet him at the Applebee's parking lot and that he would be driving a blue Dodge Ram truck. Agents observed LOEBENBERG exit his vehicle, blue Dodge Ram bearing MS license plate JI1-660, and walk over to the CS's vehicle and enter the back seat.

11. LOEBENBERG engaged in conversation with UC1 and the CS. During the time LOEBENBERG was in the vehicle the UC purchased five controlled substance

prescriptions; two Norco 10/325 milligrams for 60 dosage units each for the UC and CS; three Adipex (Phentermine) 37.5 milligrams for 30 dosage units each for the UC and CS. The third Adipex prescription was written for another UC (UC2) who was not present during the transaction, only the name of UC2 was provided to LOEBENBERG. The UC paid LOEBENBERG \$200.00 for five controlled substance prescriptions listed above. Adipex is a Schedule IV controlled substance.

Undercover meeting #3 with LOEBENBERG

12. On Wednesday, June 8, 2016, UC1 presented to LOEBENBERG in an undercover capacity in the Applebee's Parking lot located at 1601 Bienville Boulevard, Ocean Springs, MS. This meeting was prearranged between UC1 and LOEBENBERG for the purpose of UC obtaining prescription(s) for controlled substances without having a legitimate medical need. Upon arrival LOEBENBERG was driving a red Audi bearing MS license plate JKN-618. LOEBENBERG exited his vehicle and got into the front seat of UC1's vehicle. During the time LOEBENBERG was in the vehicle UC1 purchased five controlled substance prescriptions; two Norco 10/325 milligrams for 60 dosage units each for the UC and CS; three Adderall (Amphetamine Dexamphetamine) 10 milligrams for 60 dosage units each for the UCs and CS. Adderall is a Schedule II controlled substance. The third Adderall prescription was written for UC2 who was not present during the transaction, only the name of the UC2 was provided to LOEBENBERG. Additionally, the CS was not present during this meeting. UC1 paid LOEBENBERG \$200.00 for five controlled substance prescriptions listed above.

13. During conversation between LOEBENBERG and UC1, LOEBENBERG told the UC that he/she and the other individuals the UC was obtaining prescriptions would need to

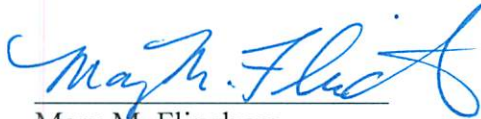
come to the office for the next prescriptions so that LOEBENBERG could make up a file. LOEBENBERG further explained that this was in case the pharmacy called the clinic there would be something on file to verify the prescription.

14. Agents conducted post buy surveillance of LOEBENBERG and observed LOEBENBERG return to his residence located at 509 Rue Chateauguary Street, Ocean Springs, MS. Agents observed LOEBENBERG park his vehicle in the driveway and walk into the residence. This residence has been identified as LOEBENBERG's primary residence. On Wednesday, August 10, 2016, your affiant learned and confirmed that LOEBENBERG was terminated from Digestive Health Center, P.A. on or before August 8, 2016. It is believed that LOEBENBERG is currently practicing within the hospital system that Digestive Health Center, P.A. serviced: Merit Health Biloxi and Singing River Health System.

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CONCLUSION

Based upon my experience as a DEA Task Force Officer and the facts listed above involving Michael Jay LOEBENBERG, it is my opinion that there is probable cause to believe that Michael Jay LOEBENBERG committed violations of Title 21 U.S.C. 841 (a) (1) in the Southern District of Mississippi, *i.e.* distributing and dispensing controlled substances outside the scope of professional practice.



Mary M. Flinchum
Task Force Officer
Drug Enforcement Administration

Sworn and subscribed to me this 1ST day of SEPT., 2016.


UNITED STATES MAGISTRATE JUDGE